IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

MFA.No. 86 of 2007()

WC.194/2003 of WORKMEN'S COMPENSATION COMMISSIONER (DEPUTY LABOUR COMMISSIONER) KOZHIKODE DT.29.11.2006.
.....

APPELLANT: OPPOSITE PARTY NO.2.

THE UNITED INDIA INSURANCE CO. LTD.,
VATAKARA BRANCH, REPRESENTED BY THE
ASSISTANT MANAGER, OFFICE OF THE REGIONAL MANAGER,
UNITED INDIA INSURANCE CO. LTD., HOSPITAL ROAD,
ERNAKULAM.

BY ADV. SRI.M.A.GEORGE

RESPONDENTS: APPLICANTS AND OPPOSITE PARTY NO.1
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1. V.P.KANARAN, S/O POKKEN,
VAZHAVECHA PARAMBATH HOUSE, P.O.TALIYIL,
PIN-673508,(VIA)KAVILUMPARA, VATAKARA TALUK.

2. V.P.JANAKI, W/O KANARAN,
-DO- -DO-

3. V.P.RAJESH, S/O KANARAN,
-DO- -DO-

4. MATHEW THOMAS, S/O THOMAS,
KOZHUVANAL, CHAPPANTHOTTAM,
P.O.KAVILUMPARA, PIN-673513,
VATAKARA TALUK.

BY

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. (W.C.C.) No.86 of 2007

Dated this the 21st day of June, 2007

Judgment

Koshy, J.

A jeep driver employed by the fourth respondent died in a motor accident and the dependents of the driver filed a claim petition before the Commissioner for Workmen's Compensation. The Commissioner found that monthly wages was Rs.4,000/- and considering the age of the deceased, relevant factor 219.95 was taken and calculated compensation of Rs.4,39,900/- and directed the employer to pay the amount with 12% interest from the date of accident. The accident occurred on 23.5.2003.

2. Two contentions are raised. First contention is as follows:

> "E. Even if Rs.4,000/- is taken as monthly income the Workmen's Compensation Commissioner should have taken only Rs.2,000/- for the purpose of assessing the compensation as per Explanation II to section 4 (1) (b). If Rs.2,000/- is taken the total amount would be only Rs.2,19,950/-."

The above contention is incorrect.

3. Explanation II of section 4 (1) of the Workmen's Compensation Act reads as follows:

> "Explanation II: Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only;"

Before the amendment of the Act in 2000, maximum wages that could have been taken into account for calculation of compensation was only Rs.2,000/-. It was increased to Rs.4,000/- by Amendment Act No.40 of 2000 and, now, maximum salary that can be taken for calculation of compensation is Rs.4,000/-. It is not stated that if the amount stipulated is Rs.4,000/- or below, only Rs.2,000/- can be fixed as the monthly wages. It only provides that even if workman receives more than Rs.4,000/- as monthly wages, for the purpose of calculation of wages, only Rs.4,000/- can be taken into account. The finding that he was getting Rs.4,000/- in 2003 is a finding of fact. Even a daily wage worker will get Rs.150/- per day in Kerala State and deceased workman was a professional driver. Therefore, first contention raised is not a substantial question of law.

4. Second contention raised is that what was

claimed in the application was only Rupees Four lakhs, but, what was awarded is Rs.4,39,900/-. The Hon'ble Supreme Court in **Shyama Devi v. Union of India** ((2005) 12 SCC 217) held that the applicant is not entitled to more amount than what is claimed. No such proposition of law was made by the Supreme Court. In that case, when excess claim for compensation was dismissed by the Commissioner as well as by the High Court, the Supreme Court while awarding compensation limited the amount of compensation at the amount claimed on the facts of that case. No proposition of law was laid down that more amount than that was claimed can be granted under the Workmen's Compensation Act in all circumstances. Even in Motor Accident claims, the Supreme Court has held that just and reasonable compensation should be awarded, notwithstanding the fact that the claimants failed to claim reasonable amount. (See: Nagappa v. Gurudayal Singh (AIR 2003 SC 674). Under the Workmen's Compensation Act, awarding of compensation is governed by the statutory provisions. Section 17 of the Workmen's Compensation Act reads as follows:

> "17. Contracting out: Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act."

Nobody can opt out, by agreement or by contract for a lesser amount of compensation, than that is provided under the Act. Even if parties agreed for an amount as compensation in a non-fatal injury, agreement has to be filed before the Commissioner, under section 28 and Commissioner will register the agreement only if he is satisfied that amount agreed is the due amount payable under the Act. Payment under the Workmen's Compensation Act is a statutory obligation. It cannot be reduced than that is provided in the statute. Dependent of an accident victim out of their ignorance might not have claimed correct amount of compensation and it is not a bar in granting the amount legally due. Even if they did not file an application, the commissioner has power to direct the employer to make deposit in case of fatal accidents as can be seen from section 32 of the Workmen's Compensation Act.

5. Workmen's Compensation Act is a welfare legislation. There is no law that Commissioner cannot grant more compensation than what is claimed and, in fact, Commissioner is bound to grant compensation only as provided under the Act. (See: Mohammed Koya v. Balan - 1987 II LLJ 486 Kerala D.B.; Balavadra Patra v. Chief Engineer - 1987 Lab.IC 347, Orissa; National Insurance Co. Ltd. v. R. Vishnu - 1991 Lab. IC 2172, Karnataka DB; Radhamony v. Secretary, Dept. of Home Affairs - 1995 I LLJ 376, Kerala DB). Here, compensation was calculated according to the statutory provisions. Once the Commissioner holds that personal injuries suffered by the workman is due to an accident occurred during the course of employment and arising out of employment, there is no option for the Commissioner, but to award compensation as fixed by the statute, irrespective of the amount claimed. Hence, on that ground also, the appeal fails and is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.(WCC)NO.86/2007

JUDGMENT

Dated:21st June, 2007